II. BOOK REVIEWS.

HANDBOOK OF THE LAW OF INSURANCE. By William Reynolds Vance. St. Paul, Minn.: West Publishing Co., 1904. pp. xiv, 683. 8vo.

This is a subject upon which recent books have not been very good. The present volume is better than its immediate predecessors; and as it seems likely to prove popular, a few suggestions are offered toward increasing the usefulness of future editions.

On p. 6 it would have been well to state clearly that the Laws of Oleron and of Wisbuy throw no light on insurance, and to guard against a misunderstanding of the date of the *Guidon de la Mer*, — which was written, as the best authorities think, between 1556 and 1600, — and to mention Santerna *de Assecurationibus* (1552) and Straccha *de Assecurationibus* (1569).

On p. 7 it is said that "The first reported appearance of any question involving insurance in the common law of England occurred . . . (1546) in the case of Crane *v.* Bell." Doubtless this statement rests upon what is said by BRADLEY, J., in Insurance Co. *v.* Durham (11 Wall. [U. S.] 1, 34), and originally upon a statement in 4 Co. Inst. 139. It is now known, however, that Crane *v.* Bell was in no way connected with insurance. 6 Selden Soc. Pub. lxviii, 129, 229; 11 *id.* xlix.

On p. 8 it is said: "The first reported insurance case heard before a common law court is Dowdale's Case, which was decided in 1589," citing 6 Co. Rep. 47 b. Dowdale's Case (6 Co. Rep. 46 b) was decided in 1605, and had nothing to do with insurance; but at p. 47 b it cites Anonymous, (M. 30 & 31 Eliz.) (1588), which is also stated in 4 Co. Inst. 142, and which is certainly one of the earliest insurance cases mentioned in the ordinary reports.

It seems unnecessary to comment further upon the historical part of the volume. For practical purposes the history of insurance need not go beyond the fact, brought out clearly in this treatise, that the subject is of Continental origin, closely connected with maritime law, and only within the last three hundred years the source of much litigation in the ordinary courts; and hence the author did simply what most authors do when he took his history from scanty and inaccurate secondary sources.

It is only just that a book intended chiefly for use in practice should be tested almost exclusively by the accuracy and fullness of its statements of law. On p. 50 it is said that "From the fact that the contract of fire insurance is peculiarly personal, the result follows that rights under it, so long as it remains executory, cannot be assigned by one party without the consent of the other." This is inaccurate; but the author doubtless is thinking not of assignment but of a sort of novation — the substitution of the interest of a new person as the subject matter of the policy. The distinction is explained in Wilson *v.* Hill (3 Met. [Mass.] 66), Fogg *v.* Middlesex Mutual F. Ins. Co. (10 Cush. [Mass.] 337), and Cummings *v.* Cheshire County Mutual F. Ins. Co. (55 N. H. 457), besides being involved in some of the cases cited in the author's foot-notes.

On pp. 286–287, it is well said that "in order to constitute a stipulation a warranty, however, it must not only be clearly shown that the parties intended it as such, but it must also form a part of the contract itself. . . . Mere reference, alone, is not sufficient." It seems that such general statements can be of slight use unless illustrated by instances which have been held to create warranties, or the reverse; but the reader has been left to find such illustrations for himself by examining cases cited in the foot-notes.

The following appears on p. 289: "The untruth of an affirmative warranty will prevent the insured from ever acquiring any rights in the policy. . . . A promissory warranty, however, . . . is in the nature of a subsequent condition of defeasance, the non-fulfillment of which renders the policy voidable." Yet the breach of an affirmative warranty also simply makes the policy voidable, for this breach can be waived, just as can the breach *ab initio* of an express condition.

On p. 425, note, the author, discussing Castellain *v.* Preston (11 Q. B. D. 380), says that in Foley *v.* Manufacturers' and Builders' F. Ins. Co. (152 N. Y.

131) "an insurer was denied subrogation under facts practically identical." This is hardly correct, as the latter case raised a question not of subrogation but simply of amount of recovery; but the mistake is rendered almost innocuous by the author's full statement of each case.

The author, although explaining clearly on p. 434 the fatal objection to the view of a minority of the cases that a breach of condition simply suspends the policy, fails to point out that many of these cases rely upon New England F. & M. Ins. Co. *v.* Wetmore (32 Ill. 221), where the condition distinctly called for mere suspension.

On pp. 483–486 the presentation of the amount of recovery in fire insurance is entirely inadequate, although the deficiency is partly supplied by the discussion of insurable interest in Chapter IV.

Yet it is not desirable that there should go abroad the impression that this book bristles with defects. Notwithstanding the shortcomings pointed out, and others of the same sort, this book, as has been said, is superior to most of the recent writing upon insurance. The discussion of duration of interest, on pp. 121–124, is distinctly good; and Chapter X., on waiver and estoppel, shows that the author can do unusually useful work when he reads the cases carefully and expresses his own conclusions.

A Political and Constitutional Study of the Cumberland Road. By Jeremiah Simeon Young. Chicago: The University of Chicago Press. 1904. pp. 107. 8vo.

The Cumberland Road was under construction by the federal government for the fifty years from 1806 to 1856, during which time it was built from Cumberland, Md., to Vandalia, Ill., for a distance of about six hundred miles, and at a cost of nearly $7,000,000. Though Mr. Young has sketched the early history of the road and has indicated its importance as a factor in the growth and unification of our country, that portion of his monograph chiefly interests us which discusses it as the center of the struggle over the constitutionality of national internal improvements. Three phases of the greater question were involved, — the power to appropriate, the power to construct, and the right of jurisdiction over the road when once constructed. The primary difficulty of appropriating from the treasury for such a purpose was at first avoided by means of a compact with each new state. Two per cent of the proceeds from the sale of public lands within the state were to constitute a fund to be expended under the direction of the President for roads to and through the state, the latter promising in return to exempt from taxation for five years the lands sold under the compact. On the basis of this fund, as the road progressed, so-called advances were made, ultimately amounting to many times the fund itself. The fiction served, however, despite the effort of Congress, under the leadership of Calhoun and Clay, to displace it by the bonus bill, until, in President Monroe's administration, the Executive and Congress arrived at the important conclusion that direct appropriation for improvements of a national character was one of the powers delegated by the general welfare clause of the Constitution.

The other problems were not so easily settled. The construction of the road was from first to last continued only with the consent of the states through which it passed, and the dependence upon that consent somewhat impeded its progress. An issue was squarely raised, however, when it seemed necessary, if the road was to be preserved, for the federal government to erect toll-gates, collect tolls, police the road, and, in short, to exercise jurisdiction over it. The Cumberland Road gate bill of 1822, asserting impliedly the constitutionality of such a step, seems to mark the extreme of congressional opinion in the direction of loose construction. It met a veto from President Monroe, who would go no farther in his liberal interpretation of the general welfare clause, and who could find no other constitutional warrant for the maintenance, for such a purpose, of federal jurisdiction within the states. As the state-rights theory of sovereignty became increasingly a subject of heated controversy, that right of jurisdiction